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shall be extended to include the following business day.

[25 FR 5907, June 28, 1960, as amended at 30 FR 254, Jan. 9, 1965; 67 FR 10829, Mar. 11, 2002]

§ 900.16 *Ex parte* communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss *ex parte* the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided*, That procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an *ex parte* communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to

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the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on any proceeding.

[42 FR 10833, Feb. 24, 1977]

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Federal Milk Marketing Agreements and Marketing Orders

AUTHORITY: 7 U.S.C. 608c(17) and 610.

SOURCE: 73 FR 49088, Aug. 20, 2008, unless otherwise noted.

Agricultural Marketing Service, USDA

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§ 900.20 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.21 Definitions.

As used in this subpart, the terms as defined in the Act and in § 900.2 of this part shall apply.

§ 900.22 Proposal submission requirements.

When a person other than the Secretary makes a proposal to amend a Federal milk marketing agreement or order under § 900.3 of this part, the proposal shall address the following, to the extent applicable:

(a) Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?

(b) What is the purpose of the proposal?

(c) Describe the current Federal order requirements or industry practices relative to the proposal.

(d) Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.

(e) What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612)? Explain/Quantify.

(f) How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify.

(g) Would a pre-hearing information session be helpful to explain the proposal?

§ 900.23 Procedures following receipt of a proposal.

Within 30 days of receipt of a proposal to amend a Federal milk marketing agreement order under § 900.3 of this part, USDA shall either: Issue a notice providing an action plan and expected timeframes for the different steps in the formal rulemaking process for completion of the hearing not more than 120 days after the date of the issuance of the notice; request additional information from the person submitting the proposal to be used in

deciding whether a hearing will be held. If the information requested is not received within a specified timeframe, the request shall be denied; or deny the request. Notice of the action plan will be made on the Dairy Programs, AMS Web site and through program releases to interested persons.

§ 900.24 Pre-hearing information sessions.

A pre-hearing information session may be held by the Secretary in response to any proposals received under § 900.3 of this part. Any person proposing an amendment to a Federal milk marketing agreement or order may request that a pre-hearing information session be held. A person submitting a proposal shall have up to 3 calendar days to modify or withdraw his or her proposal prior to the publication of a notice of hearing.

§ 900.25 Advance submission of testimony.

Any person proposing an amendment to a Federal milk marketing agreement or order under § 900.3 of this part, when participating as a witness, shall make copies of his or her testimony, if prepared as an exhibit, and any other exhibits available to USDA officials before the start of the hearing on the person's day of appearance. Individual dairy farmers shall not be subject to this requirement.

§ 900.26 Requesting USDA data for use at an amendatory hearing.

Requests for preparation of USDA data to be used at a Federal milk marketing agreement or order amendatory proceeding must be received by USDA at least 10 days before the beginning of the hearing. If an amendatory hearing is announced with less than 10 days before the start of the hearing, requests for data must be submitted within 2 days following publication of the notice of hearing in the FEDERAL REGISTER.

§ 900.27 Deadline for filing post-hearing briefs and corrections to transcript.

(a) Under § 900.10 of this part, the period of time for interested persons to

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file corrections to the transcript of testimony at a Federal milk marketing agreement or order amendatory proceeding shall be no more than 30 days after the hearing record is available.

(b) Under §900.9(b) of this part, the period of time after the completion of a Federal milk marketing agreement or order amendatory hearing for interested persons to file proposed findings and conclusions, and written arguments or briefs, shall be no more than 60 days after completion of the amendatory hearing.

§ 900.28 Deadline for issuance of recommended decisions or tentative final decisions.

In a Federal milk marketing agreement or order amendatory proceeding, USDA shall issue a recommended decision under §900.12 or, when applicable, a tentative final decision, not later than 90 days after the deadline for submission of proposed findings and conclusions, and written arguments or briefs.

§ 900.29 Deadline for filing exceptions to recommended decisions.

In a Federal milk marketing agreement or order amendatory proceeding, exceptions to a recommended decision under §900.12 shall be filed with the hearing clerk not later than 60 days after publication of the recommended decision in the FEDERAL REGISTER, unless otherwise specified in that decision.

§ 900.30 Deadline for issuance of Secretary's (final) decisions.

A Secretary's (final) decision under §900.13a to a proposed amendment on marketing agreement or order shall be issued not later than 60 days after the deadline for submission of exceptions to the recommended decision.

§ 900.31 Electronic submission of hearing documents.

To the extent practicable, all documents filed with the hearing clerk in a proceeding to amend a Federal milk marketing agreement or order shall also be submitted electronically to the Dairy Programs, Agricultural Marketing Service, USDA. All documents should reference the docket number of

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the proceeding. Instructions for electronic filing will be provided in the notice of action plan referred to in §900.23 of this subpart, at the amendatory hearing, and in each FEDERAL REGISTER publication regarding the amendatory proceeding.

§ 900.32 Informal rulemaking.

USDA may elect to use informal rulemaking procedures under 553 of Title 5, United States Code, to amend Federal milk marketing agreements and orders, other than provisions that directly affect milk prices. In making this determination, consideration shall be given to:

- (a) The nature and complexity of the proposal;
- (b) The potential regulatory and economic impacts on affected entities; and
- (c) Any other relevant matters.

§ 900.33 Industry assessments.

If the Secretary determines it is necessary to improve or expedite an amendatory formal rulemaking proceeding to amend a Federal milk marketing agreement or order, USDA may impose an assessment on pooled milk to supplement appropriated funds for the procurement of such services, including but not limited to, court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials. Only the milk pooled in the particular marketing area that stands to be affected by proposals heard at the amendatory proceeding may be assessed. The assessments shall be subject to the provisions of §1000.85 (7 CFR 1000.85) concerning assessments for order administration, including the provision that assessments shall not exceed \$.005 per hundredweight of milk for any given month.

Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Fruit, Vegetable and Nut Marketing Agreements and Marketing Orders

AUTHORITY: 7 U.S.C. 608c(17) and 610.

SOURCE: 73 FR 49310, Aug. 21, 2008, unless otherwise noted.